

# COMMITTEE REPORT

## MR. PRESIDENT:

The Senate Committee on Judiciary, to which was referred Senate Bill No. 252, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be **AMENDED** as follows:

- 1 Page 1, line 7, reset in roman "any person designated by the".
- 2 Page 1, line 8, reset in roman "probate court".
- 3 Page 1, line 8, delete "." and insert "**and**".
- 4 Page 4, delete lines 9 through 42.
- 5 Delete page 5.
- 6 Page 6, delete lines 1 through 22.
- 7 Page 7, line 4, reset in roman "This subsection applies only to a trust
- 8 executed after June 30,".
- 9 Page 7, line 5, reset in roman "1996.".
- 10 Page 7, line 15, delete "." and insert ";".
- 11 Page 7, reset in roman line 16.
- 12 Page 7, line 38, after "years" insert "**after the date of the**
- 13 **transaction**".
- 14 Page 8, line 36, after "Any" insert "**reasonable**".
- 15 Page 9, delete lines 13 through 42, begin a new paragraph and
- 16 insert:
- 17 "SECTION 11. IC 30-5-9-9, AS AMENDED BY P.L.252-2001,
- 18 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 19 JULY 1, 2002]: Sec. 9. (a) Except as provided in subsection (b), a

1 person ~~refusing~~ **who, after a reasonable period of time to review the**  
 2 **document, refuses** to accept the authority of an attorney in fact to  
 3 exercise a power granted under a power of attorney is liable to the  
 4 principal and to the principal's heirs, assigns, and the personal  
 5 representative of the estate of the principal in the same manner as the  
 6 person would be liable had the person refused to accept the authority  
 7 of the principal to act on the principal's own behalf. In any action  
 8 brought in court to either force the acceptance of the authority of the  
 9 attorney in fact or pursue damages as a result of the person's refusal to  
 10 accept the authority of an attorney in fact, the person found liable for  
 11 refusing to accept the authority of an attorney in fact shall pay the  
 12 following:

13 (1) Three (3) times the amount of the actual damages.

14 (2) The attorney's fees of the person bringing the action to court.

15 (3) Prejudgment interest on the actual damages from the date the  
 16 person refused to accept the authority of the attorney in fact.

17 (b) A person refusing to accept the authority of an attorney in fact  
 18 to exercise a power granted under a power of attorney is not liable  
 19 under subsection (a) if:

20 (1) the person has actual notice of the revocation of the power of  
 21 attorney before the exercise of the power;

22 (2) the duration of the power of attorney specified in the power of  
 23 attorney has expired;

24 (3) the person has actual knowledge of the death of the principal;

25 (4) the person reasonably believes that the power of attorney is  
 26 not valid under Indiana law and provides the attorney in fact with  
 27 a written statement **within a reasonable time**, describing the  
 28 reason that the power of attorney is not valid under Indiana law;  
 29 or

30 (5) the person reasonably believes that the power of attorney does  
 31 not grant the attorney in fact with authority to perform the  
 32 transaction requested and provides the attorney in fact with a  
 33 written statement **within a reasonable time**, describing the  
 34 reason the person believes the power of attorney is deficient under  
 35 Indiana law.

36 (c) This section does not negate the liability a person would have to  
 37 the principal or the attorney in fact under another form of power of  
 38 attorney, under the common law, or otherwise."

- 1       Page 10, delete lines 1 through 33.
- 2       Page 11, line 7, delete "." and insert ", **transfer of a life insurance**
- 3       **policy or annuity, or payment of the death proceeds of a life**
- 4       **insurance policy or annuity.**".
- 5       Page 11, line 25, after "the" insert "**nonprobate**".
- 6       Page 11, line 28, after "of the" insert "**nonprobate**".
- 7       Renumber all SECTIONS consecutively.  
(Reference is to SB 252 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 10, Nays 0.

---

**Bray**

**Chairperson**